

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

EO-167
vjr

Office of Economics, Environmental Analysis, and Administration

James R. Paschall, Esq.
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, VA 23510-9241

AUG 24 2004

Re: STB Docket No. AB-290 (Sub-No. 248X), Norfolk Southern Railway Company –
Abandonment Exemption – In Washington County, NC, and

STB Docket No. AB-290 (Sub-No. 251X), Norfolk Southern Railway Company –
Abandonment Exemption – In Chowan County, NC

Dear Mr. Paschall:

Secretary Williams has forwarded a letter to me from Mr. Patrick B. Simmons, Director of the Department of Transportation, State of North Carolina, dated July 26, 2004. Mr. Simmons raises concerns that rail track at issue in STB Docket No. AB-290 (Sub-No. 248X) was removed prior to the applicant, Norfolk Southern Railway (NS), receiving abandonment authority from the Board. I am aware that you, on behalf of NS, wrote back to Mr. Simmons on July 30, 2004, assuring him that NS did not intend that the rail line be salvaged prior to completion of the Board's environmental review process and issuance of final authority to abandon.

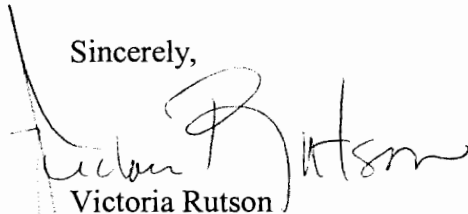
In STB Docket No. 290 (Sub-No. 248X), the Board's Section of Environmental Analysis (SEA) issued an Environmental Assessment (EA) for public review and comment on June 4, 2004. In that EA, SEA recommended eight environmental conditions requiring NS to consult with various appropriate Federal, State, and local agencies prior to salvage. No comments to the EA were submitted. Because NS did not disclose that the line had already been salvaged, the Board imposed the conditions recommended by SEA in a decision served July 26, 2004.

I am concerned that the consultation conditions imposed by the Board in STB Docket No. 290 (Sub-No. 248X) have been rendered meaningless. To ensure that the agencies involved learn about what has occurred and have the opportunity to provide their input, I am requesting that you consult with each of the agencies listed in the environmental conditions concerning the environmental effects of the salvage and what mitigation, if any, could be appropriate for such effects. When your consultations are complete, I would appreciate a report back to me detailing your consultation efforts and the results of those efforts.

This approach is consistent with the Board's decision served August 20, 2004, in STB Docket AB 290 (Sub-No. 251)(copy enclosed). In that case, NS notified the Board following the comment period on an EA that the rail and track material on the line at issue in that case had already been removed. In light of NS's disclosure, the Board modified SEA's recommended consultation conditions to require NS to consult with the appropriate agencies concerning the environmental effects of the salvage and what mitigation, if any, could be appropriate for any such effects. In addition, the Board required NS to notify SEA of the results of those consultations.

I appreciate your future cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Victoria Rutson", is written over the printed name.

Victoria Rutson

Chief

Section of Environmental Analysis

Enclosure

34931
DO

SERVICE DATE - AUGUST 20, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 251X)¹

NORFOLK SOUTHERN RAILWAY COMPANY-ABANDONMENT EXEMPTION-
IN CHOWAN COUNTY, NC

Decided: August 19, 2004

Norfolk Southern Railway Company (NSR) and North Carolina & Virginia Railway Company, Inc., The Chesapeake and Albemarle Division (NCVA) (referred to jointly as applicants), filed a joint notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments and Discontinuances of Service, for NSR to abandon, and for NCVA to discontinue service under a lease from NSR over, a 0.33-mile line of railroad between approximately milepost NS-73.67 and milepost NS-74.00 in Edenton, Chowan County, NC. Notice of the exemption was served and published in the Federal Register on July 16, 2004 (69 FR 42804-05). The exemption was scheduled to become effective on August 17, 2004.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding, which was served on July 23, 2004. In the EA, SEA indicates that applicants stated that the line is located within one of the 22 coastal counties of North Carolina. The EA further states that the North Carolina Department of Environment and Natural Resources submitted oral comments to applicants indicating that, as long as no dredge and fill activities would be conducted, no state water quality permits would be required. NSR stated that it does not intend to appreciably remove or alter the contour of the roadbed, undertake significant in-stream work, or dredge and/or fill any materials in connection with the proposed abandonment.

Further, SEA indicates that, according to applicants, eight state listed and/or Federally listed threatened or endangered species or species of concern may occur in Chowan County. These include the Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*), the Southeastern Myotis (*Myotis austroriparius*), the Bald Eagle (*Haliaeetus leucocephalus*), the Timber Rattlesnake (*Crotalus horridus*), the Alewife Floater (*Anodonta implicata*), the Eastern Lampmussel (*Lampsilis radiata radiata*), the Tidewater Mucket (*Leptodea ochracea*), and the Eastern Pondmussel (*Ligumia nasuta*).

¹ The notice served and published on July 16, 2004, embraced STB Docket No. AB-866X, North Carolina & Virginia Railroad Company, Inc., The Chesapeake and Albemarle Division-Discontinuance of Service Exemption-in Chowan County, NC.

SEA therefore recommends that conditions be imposed requiring NSR to consult with: (1) the U.S. Fish and Wildlife Service (USFWS) regarding Federally listed threatened and endangered species which may occur in the vicinity of the line proposed for abandonment, prior to beginning any salvage activities; and (2) the North Carolina Department of Environment and Natural Resources regarding state listed threatened and endangered species that may occur in the vicinity of the line proposed for abandonment, prior to beginning any salvage activities.

SEA also states that the U.S. Army Corps of Engineers (Corps) submitted oral comments to applicants requesting that they submit a letter detailing salvage activities prior to beginning salvage. SEA states that, based on the Corps' comments, it recommends that a condition be imposed requiring NSR to consult with the Corps prior to beginning salvage activities.

SEA further states that the North Carolina Division of Archives and History (State Historic Preservation Officer or SHPO) has not completed its review of the proposed abandonment and discontinuance of service. SEA states that, pending completion of the SHPO's review, it recommends that a condition be imposed requiring NSR to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Comments to the EA were due by August 9, 2004. No comments were received by the due date. However, by letter filed on August 9, 2004, NSR notified the Board that the rail and track material on the line has already been removed. While acknowledging that it erred in failing to notify the Board sooner, it characterizes the error as "relatively harmless." NSR also points out that the Princess Anne Creek bridge (which is 50 years old or older and therefore may be potential historic) has not yet been salvaged.

In light of NSR's recent disclosure, changes to SEA's recommended environmental conditions are necessary. Because consultation with state agencies and the Corps is no longer possible prior to salvage, SEA's recommended conditions 1 through 3 have been modified to require NSR to now consult with those agencies concerning the environmental effects of the salvage and what mitigation if any, could be appropriate for any such effects. In addition, NSR will be required to notify SEA of the result of those consultations. The conditions recommended by SEA in the EA as modified herein will therefore be imposed.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the notice served and published in the Federal Register on July 16, 2004, exempting the abandonment of the line described above is subject to the conditions that NSR shall: (1) consult with the U.S. Fish and Wildlife Service regarding Federally listed threatened and endangered species, which may occur in the vicinity of the line proposed for abandonment, the environmental effects of salvage activities on those species, and what mitigation, if any, could be appropriate for any such effects; (2) consult with the North Carolina Department of Environment and Natural Resources regarding state listed threatened and endangered species which may occur in the vicinity of the line proposed for abandonment, the environmental effects of salvage activities on those species and what mitigation, if any, could be appropriate for any such effects; (3) consult with the U.S. Army Corps of Engineers regarding the details of the salvage activities that have occurred and what mitigation, if any, could be appropriate; (4) notify SEA of the results of these consultations; and (5) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary